

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re: BRIDGESTONE/FIRESTONE, INC.,
ATX, ATX II, and WILDERNESS TIRES
PRODUCTS LIABILITY LITIGATION

William Halkett, Jr. et al. v. Bridgestone/Firestone,
Inc. et al.

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) Master File No. IP 00-9373-C-B/S
) MDL No. 1373
) (centralized before Hon. Sarah Evans Barker,
) Judge)
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)
)
) Individual Case No. IP 00-5014-C-B/S
)

ORDER ON MOTION TO DISMISS

Now before the Court is the Motion to Dismiss for Lack of Venue filed by defendant City Tire Service of Leesburg, Inc. (“City Tire”). For the reasons set forth below, the Motion to Dismiss for Lack of Venue is DENIED.

Discussion

The Halketts initiated this action on August 23, 2000, with the filing of their complaint in the 11th Judicial Circuit in and for Dade County, Florida. The Halketts named as defendants Ford Motor Company, Bridgestone/Firestone, Inc., Sunrise Ford Company, and City Tire. Defendant Ford filed a Notice of Removal on September 8, 2000, citing the plaintiffs’ assertion of claims under a federal

statute as the basis for federal subject matter jurisdiction and thereby effecting the removal of this case to the District Court for the Southern District of Florida. The other defendants, including City Tire, timely filed their notices of consent to and joinder in the removal to the Southern District of Florida.

City Tire now maintains that this action should be dismissed (1) for lack of personal jurisdiction and (2) for improper venue. City Tire's motion to dismiss is ill-founded for several reasons.

First, City Tire contends that the Southern District of Florida lacks personal jurisdiction over it because it has its business locations only in counties within the Middle District of Florida and not in the Southern District. City Tire misapprehends the personal jurisdiction inquiry, which focuses on a defendant's contacts with the forum state, not with a particular federal judicial district within a state. See, e.g., World-Wide Volkswagen v. Woodson, 444 U.S. 286, 297 (1980). City Tire has admitted that it does business in Florida, and that is the end of the personal jurisdiction inquiry.

Second, City Tire maintains that because it does not do business in the Southern District of Florida, venue in that district is improper. City Tire cites no authority for its assertion (other than its erroneous assertion that personal jurisdiction is lacking, which, of course, is a separate issue) and never identifies the appropriate inquiry. Venue in cases that have been removed to federal court is governed by the removal statute, 28 U.S.C. §1441. See Polizzi v. Cowles Magazines, 345 U.S. 663, 665 (1953). See also Burlington Northern & Santa Fe Railway v. Herzog Services, 990 F.Supp. 503, 504 (N.D. Tex. 1998); Dunn v. Babco Textron, 912 F.Supp. 231, 232 (E.D. Tex. 1995); Rochon v. Federal Bureau of Investigation, 691 F.Supp. 1548, 1565 (D.D.C. 1988). Venue under section 1441 is proper in the district where the state court action was pending. The parties' filings before transfer as

part of this MDL demonstrate that this action was removed to the Southern District of Florida from a state court within that district. Venue is therefore proper.¹

Finally, City Tire complains in its Reply Brief that the plaintiffs' opposition brief was not timely filed and that it has been prejudiced by the late filing. The plaintiffs' opposition brief was not timely filed, but City Tire has not been prejudiced. First, City Tire's motion to dismiss would have been denied even if the plaintiffs had filed no response to it, because it plainly lacked foundation in the applicable law. Second, City Tire has not been prejudiced, as it claims, in its ability "to determine facts that would support its motion under 28 USCA, §1404." Reply Brief at 2. City Tire advanced the argument (albeit incorrectly) in its original brief that this action should be transferred under section 1404. See Defendant's Memorandum of Law in Support of Defendant's Motion to Dismiss for Lack of Venue at 2-3. It should have determined facts to support that argument before making it.

For all of the above reasons, City Tire's Motion to Dismiss for Lack of Venue is DENIED.

It is so ORDERED this _____ day of March, 2001.

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

¹Moreover, even if the case had been removed to the wrong district, it was incumbent upon City Tire to object to the removal. Not only did City Tire not object to the removal, it joined in it.

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